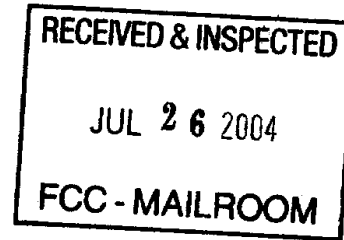


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July 20, 2004

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
Washington, DC 20554

Att: Chief Policy Division, International Bureau

Re: IB Docket No. 02-432 International Settlements Policy Reform  
IB Docket No. 96-261 International Settlement Rates

Dear Ms. Dortch:

On behalf of our client, International Access, Inc. d/b/a Access International ("Access"), this letter is submitted in the above-captioned dockets for the express and limited purpose of responding to certain statements made regarding Access by Bayan Telecommunications, Inc. ("Bayantel") in reply comments filed on July 13, 2004. Access recognizes that the Commission's rules do not normally contemplate surreply comments in rulemaking proceedings. However, since the statements made on the record by Bayantel regarding Access were made for the first time in reply comments, it is necessary for Access to respond to those statements so as to correct the record before the Commission. Bayantel incorrectly asserts that (a) Access is a minor provider of services on the U.S. - Philippines route; (b) the minimally supportive comment of AT&T, a company that has entered into a secret 'interim', pricing deal with PLDT, somehow reflects the view of U.S. carriers on the issue; and (c) that the Commission has reached any determination regarding removal of the International Settlements Policy on the U.S. - Philippines route.<sup>1</sup>

<sup>1</sup> Access has learned that three other parties - PLDT, MCI, and Sprint - have submitted reply comments in which they respond to Access's objections to removal of the ISP on the U.S.-Philippines route. Significantly, none of those parties disputes the relevant facts demonstrated by Access: that the current settlement rates are not publicly available, hence discrimination cannot be detected or addressed; that the current rates are higher than those which were in effect prior to the conduct of Philippine carriers which the Commission's International Bureau in March 2003 (since affirmed by the Commission) determined to constitute "whipsawing" - a form of anticompetitive behavior; and that the fact that the "Big 3" U.S. carriers (AT&T, MCI, Sprint), having made their deals with PLDT, now support removal of the ISP, does not mean that the criteria for ISP removal have been met or that other U.S. carriers concur with their position. Finally, each of those commenters notes that the current secret "interim" rates are below benchmark.

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Bayantel states that its reply comments are for the limited purpose of responding to "certain potentially misleading allegations" made by Access. Nothing in Access's comments (or in its reply comments) is in any manner misleading. Interestingly, Bayantel characterizes Access as a "very minor provider" of telecommunications services on the U.S. – Philippines route (Bayantel Reply Comments at 2). That is simply not correct. Access is a significant provider of service to the Philippines, much of which is provided on a wholesale basis to other U.S. carriers. Access and companies like it allow smaller US companies to compete, even in markets dominated and controlled by a dominant carrier like the Philippine Long Distance Telephone Company ("PLDT"). Access carried more than five hundred million minutes (500,000,000) between the U.S. and the Philippines in both 2003, and 2004 and would have carried more but for the market interruption and dislocation caused by PLDT's "whipsawing" activities during 2003. At footnote 5 of Bayantel's reply comments, it identifies several carriers with the word "Access" in their names. None of those carriers are related to Access.

Moreover, Bayantel states that, because of Access's size (which it describes inaccurately), its concerns "do not rise to the level that would justify reversal of the Commission's prior finding that the public interest is best served by repeal of the ISP on the U.S. – Philippines route." Bayantel seems to be stating that only the largest U.S. carriers have standing to challenge the proposed removal of the ISP. As Bayantel states, "... U.S. carriers handling the vast majority of traffic on this route either have no stated objections to the repeal of the ISP, or have affirmatively supported repeal, as in the case of AT&T Corp." (Bayantel Reply Comments at 1).

As noted above, Bayantel inaccurately describes Access's role in the provision of service on the route. However, size or market share is not what confers standing on a party to raise public interest issues in Commission proceedings, including proceedings regarding the International Settlements Policy ("ISP"). The implication in Bayantel's reply comments that only the largest U.S. carriers have a right to address the status of the ISP on the U.S. – Philippines route is a peculiar interpretation of the ISP. As the Commission has stated so many times, the primary reason for the ISP is to prevent discrimination against U.S. carriers and their customers. The largest U.S. carriers – AT&T, MCI, and Sprint – have announced that they have entered into secret "interim" deals with PLDT and with other Philippine carriers. Unless other U.S. carriers, including Access, know the terms of those deals, including applicable settlement rates, there is no way for those carriers to be able to determine whether or not they are receiving nondiscriminatory treatment from those Philippine carriers. It seems odd that a policy whose purpose is to prevent discrimination could not be enforced by entities, like Access, which may be victims of the very discrimination which the policy is crafted to prevent.

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Access never asserted that the interim rates are above benchmark. What Access asserted is that those rates are not publicly available, that the Commission can not conclude that discriminatory pricing does not exist on the route, and that the current rates have been increased as a result of behavior which the Commission has described as anticompetitive.

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What is misleading – indeed inaccurate – is Bayantel's reference to the Commission's "prior finding that the public interest is best served by repeal of the ISP on the U.S. – Philippines route." While it is correct that in its First Report and Order in the International Settlements Policy Reform proceeding, the Commission announced a general policy in favor of removal of the ISP on benchmark-compliant routes, it is quite clear that the Commission has not determined to eliminate the ISP on the U.S. – Philippines route. In AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief et al, FCC 04-112, released June 4, 2004, the Commission stated, with respect to the U.S. – Philippines route that "the ISP continues to apply to the route . . . until such a time as the Commission removes it pursuant to the process set out in the *2004 ISP Reform Order*" (¶ 3). Thus, contrary to Bayantel's assertion, there has not yet been a finding that the ISP should be removed on the route. Further, as Access demonstrated in its comments, there is no publicly-available information which would support a conclusion that the current rates (which are secret interim rates) are benchmark-compliant.

Finally, Access is especially disturbed by the inaccurate and disparaging statements about it contained in Bayantel's reply comments since Access and Bayantel have enjoyed a mutually beneficial and cooperative business relationship for several years. Lest there be any misunderstanding, Access has no objection to removal of the ISP with respect to those Philippine carriers which are themselves non-dominant. It continues to oppose removal of the ISP with respect to PLDT – which remains the dominant carrier in the Philippines – as well as any Philippine carriers owned by or controlled by PLDT.

Respectfully submitted,



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*Counsel for International Access, Inc.*  
*d/b/a Access International*

cc: Gregory C. Staple, Esq.  
Mr. Donald Abelson  
Mr. James Ball  
Ms. Alexandra Field  
All Parties of Record